

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF DELAWARE**

---

AFFYMETRIX, INC.,	)	)
a Delaware Corporation,	)	)
	)	)
Plaintiff/Counter-Defendant,	)	Civil Action No. 04-901-JJF
vs.	)	)
ILLUMINA, INC., a Delaware Corporation,	)	)
	)	)
Defendant/Counter-Plaintiff.	)	)
	)	)

---

**ILLUMINA'S FIFTH NOTICE OF DEPOSITION  
PURSUANT TO FED. R. CIV. P. 30(b)(6)**

In accordance with the provisions of Rules 26 and 30 of the Federal Rules of Civil Procedure, Illumina, Inc. (“Illumina”) hereby provides notice that commencing at 9:00 a.m. on February 17, 2006, at the offices of KIRKLAND & ELLIS LLP, 555 California Street, San Francisco, CA 94104-1501, or at such other time and place mutually agreed upon by counsel for the parties, it will take the deposition of Affymetrix, Inc. (“Affymetrix”) by oral examination of witness(es) designated by Affymetrix to testify on its behalf as the person(s) most competent to testify concerning the matters listed on Attachment A hereto. Pursuant to Federal Rule of Civil Procedure 30(b)(6), the person(s) designated by Affymetrix should be prepared to testify as to such matters known or reasonably available to Affymetrix.

Affymetrix is requested to provide Illumina’s counsel, on or before February 10, 2006, a written designation of the names and positions of the officers, directors, managing agents or other persons who are most competent to testify concerning the areas of testimony set forth in Attachment A, and, for each person designated, the matters on which he or she will testify.

The depositions will be taken upon oral examination before an official authorized by law to administer oaths and will continue from day to day until completed. Pursuant to Rule 30(b)(2), testimony of the witness(es) will be recorded by both stenographic means and sound-and-visual means.

You are required to produce the witness(es) at the stated time and place, and are invited to attend to cross-examine.

Dated: February 1, 2006

By: /s/ Richard K. Herrmann

Richard K. Herrmann #405  
Mary B. Matterer #2626  
MORRIS, JAMES, HITCHENS &  
WILLIAMS LLP  
PNC Bank Center, 10<sup>th</sup> Floor  
222 Delaware Avenue  
Wilmington, DE 19801  
(302) 888-6800  
rherrmann@morrisjames.com  
mmatterer@morrisjames.com

Robert G. Krupka, P.C.  
KIRKLAND & ELLIS LLP  
777 South Figueroa Street  
Los Angeles, California 90017  
(213) 680-8400

Mark A. Pals, P.C.  
Marcus E. Sernel  
KIRKLAND & ELLIS LLP  
200 East Randolph Drive  
Chicago, IL 60601  
(312) 861-2000

*Counsel for Illumina, Inc.*

**ATTACHMENT A****DEFINITIONS**

Illumina hereby incorporates by reference the Definitions as set forth in Illumina's First Set of Requests for Production and Second Set of Requests for Production.

**AREAS OF TESTIMONY**

1. Information contained in the financial and sales reports that have been, or will be, provided to Illumina regarding Affymetrix's systems, products and/or services, including but not limited to the reports produced as AVI\_196153-196160, AVI\_192641-192712, AVI\_056491-056943, AVI\_137432, and AVI\_137433.
2. Units sold and net sales revenue for Affymetrix's systems, products and/or services.
3. Calculation of costs of goods sold for Affymetrix's systems, products and/or services.
4. Costs associated with generation of revenues for Affymetrix's systems, products and/or services, including direct costs, division overhead, selling, general and administrative and any other relevant costs.
5. Information regarding payments received or made by Affymetrix, including royalties, licensing fees or other payments, for use of intellectual property, including but not limited to information contained within the report(s) produced at AVI\_134569-134603.
6. Identification of factors that drive sales of the relevant products.
7. Identity, location and authenticity of documents and things relating to the topics set forth above.

**CERTIFICATE OF SERVICE**

I hereby certify that on the 1<sup>st</sup> day of February 2006, I caused to be electronically filed the foregoing document, **ILLUMINA'S FIFTH NOTICE OF DEPOSITION PURSUANT TO FED. R. CIV. P. 30(b)(6)**, with the Clerk of the Court using CM/ECF which will send notification of such filing to the following:

Jack B. Blumenfeld, Esq.  
MaryEllen Noreika, Esq.  
Morris Nichols Arsh & Tunnell  
1201 N. Market Street  
Wilmington, DE 19899-1347

Additionally, I hereby certify that on the 1<sup>st</sup> day of February 2006, the foregoing document was served via email on the following non-registered participants:

Daniel R. Reed, Esq.  
Affymetrix, Inc.  
6550 Vallejo Street, Suite 100  
Emeryville, CA 94608  
(510) 428-8500  
Fax: (510) 428-8583

---

*/s/ Richard K. Herrmann*  
Richard K. Herrmann #405  
Mary B. Matterer #2626  
MORRIS, JAMES, HITCHENS &  
WILLIAMS LLP  
PNC Bank Center, 10<sup>th</sup> Floor  
222 Delaware Avenue  
Wilmington, DE 19801  
(302) 888-6800  
rherrmann@morrisjames.com

*Counsel for Illumina, Inc.*